

Respondent alleges, based upon the medical reports of Dr. J. Mark Melhorn, that The Boeing Company is responsible for only 80 percent of the costs and expenses associated with claimant's injury. Dr. Melhorn, in his chart note of April 16, 1996 opined that 20 percent of claimant's current condition was attributable to his work activities for Perfecta Machine Shop and 80 percent attributable to claimant's employment with The Boeing Company. Respondent requests the temporary total disability benefits and medical expenses authorized by Judge Krysl be apportioned appropriate to the opinion of Dr. Melhorn.

K.S.A. 44-534a, as amended by S.B. 649 (1996), allows appeals from preliminary hearings only when the following issues are in dispute: (1) whether the employee suffered accidental injury, (2) whether the injury arose out of and in the course of the employee's employment, (3) whether notice is given or claim timely made, or (4) whether certain defenses apply. These issues are considered jurisdictional and subject to review by the Appeals Board. Under K.S.A. 44-551, as amended by S.B. 649 (1996), appeal from a preliminary hearing can be taken if it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at preliminary hearing.

K.S.A. 44-534a gives the administrative law judge the power and jurisdiction to award benefits when considering the issues of medical treatment and the payment of temporary total disability compensation.

A dispute regarding which employer or insurance company may or may not be liable for certain expenses is not an issue appealable to the Appeals Board from a preliminary hearing. The Administrative Law Judge, in awarding claimant temporary total disability compensation and medical benefits, was well within her jurisdiction to so order. The apportionment issue was reserved for future determination and shall so remain until such time as a final award in this matter is issued.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Shannon S. Krysl dated April 30, 1996, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of July 1996.

BOARD MEMBER

c: Tom E. Hammond, Wichita, KS
Vaughn Burkholder, Wichita, KS
Steven L. Foulston, Wichita, KS
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director